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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/434,965	11/05/1999	ALAIN T. LUXEMBURG	ORT-1060	4589

23377 7590 01/29/2004  
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EXAMINER

VANDERVEGT, FRANCOIS P

ART UNIT	PAPER NUMBER
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1644

DATE MAILED: 01/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	Application No. 09/434,965	Applicant(s) LUXEMBURG ET AL.	
	Examiner F. Pierre VanderVegt	Art Unit 1644	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 16-18.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

PHILLIP GAMBEL, PH.D.  
PRIMARY EXAMINER  
1/23/04

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☒ Other: See Continuation Sheet

Continuation of 2. NOTE: The added limitation that the empty human MHC class I complexes are derived from a recombinant Drosophila system would require additional search to determine whether there is a physical difference between MHC class I molecules expressed in Drosophila and MHC class I molecules expressed in mammalian cells.

Continuation of 10. Other: Applicant has amended claim 16 to recite that the MHC class I molecules of the claimed invention are purified from recombinant Drosophila cells. Applicant argues that this renders the claimed invention unobvious because Burshtyn does not teach that the empty MHC molecules were from Drosophila. Applicant has attempted to overcome the teachings of the reference by drafting the claims in a product-by-process fashion, relying upon a different cellular source of MHC Class I molecules to distinguish the final product. However, the fact remains that the cited reference and the present specification both disclose empty human MHC class I complex on a non-lipid bilayer substrate. Absent a showing that there is a physical difference between empty human MHC class I complexes expressed in and purified from recombinant Drosophila cells and empty human MHC class I complexes expressed in and purified from mammalian cell lines, the claimed invention remains obvious over the teaching and a person having ordinary skill in the art at the time the invention was made would have been motivated to practice the teachings of Burshtyn using other human MHC class I molecules for the reasons made of record in the Final Office Action mailed September 22, 2003.

F. Pierre VanderVegt  
Patent Examiner, Art Unit 1644  
January 23, 2004

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